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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

FEDERAL POWER COMMISSION, ET AL. ..... *Petitioners*

v. No. 543

ARKANSAS POWER & LIGHT COMPANY ..... *Respondent*

MOTION OF AMICUS CURIAE TO TRANSFER FROM THE SUMMARY TO THE REGULAR DOCKET AND FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT UPON SUBMISSION OF THE CAUSE

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Comes Guy E. Williams, Attorney General of the State of Arkansas, and on behalf of the State as *Amicus Curiae* herein moves the Court to transfer this cause from the summary to the regular docket and that the movant be granted leave to participate in the oral argument upon the submission of this cause and in support of this motion shows to the Court:

1. Upon granting *certiorari*, the Court, upon the theory that the issues involved herein did not justify extended argument, assigned the cause to a summary docket. In cases upon this docket only one-half hour on a side is allowed for argument, and only one counsel will be heard on the same side. With due deference, the theory of the Court for assigning the cause to its summary docket is erroneous as it will hereafter appear. The issue presented and which must be determined presents a serious jurisdictional question—an exclusive judicial question—a question of first impression which affects the sovereign rights of all of the states of this nation and involves their dignity as sovereigns, and, therefore, merits an extended argument and a most careful investigation and consideration by this Court.

2. Believing that the issues presented here were of vital interest to the States of this nation, and especially to the State of Arkansas, the State of Arkansas and some twenty or twenty-five other States of this nation, acting through their respective Attorneys General have, under the liberal rules of this Court, filed a brief *amici curiae* pointing out and emphasizing the interest of the States in this litigation, insisting that the action of the Court below should be affirmed.

3. The principal issue to be determined herein is the jurisdiction of the District Court for the District of Columbia to entertain a suit involving conflicting claims of the petitioners, the Federal Power Commission and its members, and of the Arkansas Public Service Commission and its members, with respect to which Commission has exclusive regulatory power and authority over the same subject matter, the official corporate accounts of the Respondent, a public utility incorporated under the laws of the

State of Arkansas and therein exclusively engaged in generating, purchasing, transmitting and selling electric energy to consumers and to others at wholesale for resale.

4. Petitioners' claim of exclusive jurisdiction is based upon Section 301(a) of the Federal Power Act (16 U.S.C.A. Sec. 825). This section gives the Federal Commission jurisdiction over certain accounting records of a public utility. It, however, by reason of a proviso clause, withholds from the Federal Commission regulatory power and jurisdiction over any accounting records of a public utility which are required to be kept by and under the authority of the laws of any State. The Arkansas Commission's claim of exclusive jurisdiction is based upon said proviso clause and statutes of the State of Arkansas.

5. The litigation, upon its merits, involves a controversy between the two Commissions, a clash of asserted sovereign rights and powers.

6. The principal contention and argument of the Federal Commission is not that the District Court does not have jurisdiction of the subject matter of this suit, but that it should decline to exercise that jurisdiction because of the failure of the Respondent and the State Commission to exhaust their so-called administrative remedy. So far as the State Commission is concerned, the Federal Commission's argument is that it should intervene in a proceeding then pending before the Federal Commission involving the accounts and the accounting of the Respondent, and should there assert and defend its claim of exclusive jurisdiction; that, in effect, the State of Arkansas, acting through its State Commission, has no standing in the District Court to contest with the Federal Commission its claim of exclusive jurisdiction of Respondent's official

corporate accounting records, but must submit that claim first to the Federal Commission, an administrative agency.

7. The movant, with due deference, submits that aside from being novel, such procedure has never been enforced against a State or an agency thereof asserting or defending sovereign rights and powers against the encroachment by a bureau of the Federal Government.

Wherefore, the movant prays that this cause be transferred from the summary to the regular docket of the Court, and that he, as *amicus curiae,* be granted leave to participate in oral argument upon submission of this cause.

Respectfully submitted

GUY E. WILLIAMS
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